

Permitting & Assistance Branch Staff Report
Revised Solid Waste Facilities Permit for the
Newby Island Compost Facility
SWIS No. 43-AN-0017
December 19, 2017

Background Information, Analysis, and Findings:

This report was developed in response to the the City of San Jose, Department of Planning, Building and Code Enforcement, Local Enforcement Agency's (LEA) request for the Department of Resources Recycling and Recovery (Department) concurrence on the issuance of a proposed revised Solid Waste Facilities Permit (SWFP) for the Newby Island Compost Facility, SWIS No. 43-AN-0017, located in City of San Jose and owned and operated by International Disposal Corporation of California, Inc. A copy of the proposed permit is attached. This report contains Permitting & Assistance Branch (PAB) staff's analysis, findings, and recommendations.

The proposed permit was initially received on November 30, 2017. A new proposed permit was received on December 18, 2017. Action must be taken on this permit no later than February 16, 2018. If no action is taken by February 16, 2018, the Department will be deemed to have concurred with the issuance of the proposed revised SWFP.

Proposed Changes:

The following changes to the first page of the permit are being proposed:

	Current Permit (2002)	Proposed Permit
Permitted Maximum Tonnage	980 Tons Per Day	700 Tons Per Day
Permitted Vehicles	The amount of incoming and outgoing vehicle traffic is regulated by the Recyclery SWFP. All compost vehicle traffic will be a subset of the Recyclery Traffic, i.e., traffic is tied to the Recyclery's overall traffic levels.	Traffic will be regulated pursuant to 14 CCR Section 17867(a)(7)
Design Capacity	Peak 980 Tons Per Day	146,600 cubic yards
Annual Average Tons Per Day (tons per day)	N/A	515
Maximum Total Processed (tons per year)	N/A	160,680

Maximum Total Processed (tons per quarter)	N/A	53,500
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Other Changes include:

1. Updates to the following sections of the SWFP: “Findings”, “Documents that describe and/or restrict the operation of the facility”, and “LEA Conditions”, including the rewording and/or deletions for the purpose of updating and/or clarifying operational requirements.

Key Issues:

The proposed permit will allow for the following:

1. Reduction of maximum permitted daily tonnage from 980 tons per day to 700 tons per day.
2. Adjusting the compost process from the current practice of open windrows and covered aerated static piles to entirely utilizing covered aerated static piles (CASP) technology.
3. Update operator name from Browning Ferries Industries of California, Inc. to International Disposal Corporation of California, Inc.
4. Incorporate the updated RCSI, dated November 2017.

Background:

Newby Island Compost Facility is an existing composting facility located within the permitted boundary of Newby Island Sanitary Landfill, in City of San Jose. This 18-acre composting facility is owned and operated by International Disposal Corporation of California, Inc. The facility operates under a full SWFP issued by the City of San Jose LEA on January 29, 2002.

Findings:

Staff recommends concurrence in the issuance of the proposed revised SWFP. All of the required submittals and findings required by Title 27 of the California Code of Regulations (27 CCR), Section 21685, have been provided and made. Staff has determined that the California Environmental Quality Act (CEQA) requirements have been met to support concurrence. The findings that are required to be made by the Department when reaching a determination are summarized in the following table. The documents on which staff’s findings are based have been provided to the Deputy Director with this Staff Report and are permanently maintained by the Waste Permitting, Compliance, and Mitigation Division.

27 CCR Sections	Findings	
21685(b)(1) LEA Certified Complete and Correct Report of Facility Information	The LEA provided the required certification in their permit submittal letter dated December 18, 2017.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21685(b)(2) LEA Five Year Permit Review	A Permit Review Report was prepared by the LEA on July 6, 2017. The LEA provided a copy to the Department on July 17, 2017. The changes identified in the review are reflected in this permit revision.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21685(b)(3) Solid Waste Facility Permit	Staff received a proposed Solid Waste Facilities Permit on December 18, 2017.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21685 (b)(4)(A) Consistency with Public Resources Code 50001	The LEA in their permit submittal package received on December 18, 2017, provided a finding that the facility is consistent with PRC 50001. Waste Evaluation & Enforcement Branch (WEEB) staff in the Jurisdiction Compliance Unit found the facility is identified in the Nondisposal Facility Element, as described in the memorandum dated December 15, 2017.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21685(b)(8) Operations Consistent with State Minimum Standards	WEEB staff in the Inspections and Enforcement Agency Compliance Unit found that the facility was in compliance with all operating and design requirements during an inspection conducted on October 31, 2017. See Compliance History below for details.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21685(b)(9) LEA CEQA Finding	The LEA provided a finding in their permit submittal package received on December 18, 2017, that the proposed permit is consistent with and supported by the existing CEQA documentation. See the Environmental Analysis below for details.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21650(g)(5) Public Notice and/or Meeting, Comments	A Public Informational Meeting was held by the LEA on September 25, 2017. Written comments and oral comments were addressed by LEA staff. See Public Comments section below for details.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
CEQA Determination to Support Responsible Agency's Findings	The Department is a responsible agency under CEQA with respect to this project. Permitting and Assistance Branch staff has determined that the CEQA record can be used to support the Deputy Director's action on the proposed revised SWFP.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable

Compliance History:

WEEB staff in the Inspections and Enforcement Agency Compliance Unit conducted a pre-permit inspection on October 31, 2017 and found that the facility is in compliance with applicable state minimum standards and permit conditions. PAB staff was also present during the pre-permit inspection.

Below are the details of the landfill's compliance history based on the LEA's monthly inspection reports during the last five years:

- 2016 - 2017 – No violations were noted.
- 2015 (September) – One violation of 14 CCR 17867(a)(2) – Vectors/Odor/Litter/Hazard/Nuisance/Noise/Dust.
- 2012 – 2014 - No violations were noted.

All violations were corrected to the satisfaction of the LEA.

Environmental Analysis:

Under California Environmental Quality Act (CEQA), the Department must consider, and avoid or substantially lessen where possible, any potentially significant environmental impacts of the proposed SWFP before the Department concurs in it. In this case, the Department is a Responsible Agency under CEQA and must utilize the environmental document prepared by the City of San Jose Planning Department, acting as Lead Agency, absent changes in the project or the circumstances under which it will be carried out that justify the preparation of additional environmental documents and absent significant new information about the project, its impacts and the mitigation measures imposed on it.

The changes that will be authorized by the issuance of the proposed permit include:

1. Reduction of maximum permitted daily tonnage from 980 tons per day to 700 tons per day.
2. Adjusting the compost process from the current practice of open windrows and covered aerated static piles to entirely utilizing covered aerated static piles (CASP) technology.
3. Update operator name from Browning Ferries Industries of California, Inc. to International Disposal Corporation of California, Inc.
4. Incorporate the updated RCSI, dated November 2017.

The proposed changes are supported by the following environmental document:

- Draft Environmental Impact Report (EIR) and First Amendment to the Draft EIR, State Clearinghouse No. 2007122011, dated May 2012.

A Draft Environmental Impact Report (EIR), State Clearinghouse No. 2007122011, was circulated for a 45-day comment period from September 22, 2009 to November 5, 2009.

The lead agency received numerous comments on the Draft EIR. Working with its environmental consultants, David Powers and Associates, the lead agency prepared responses to all those comments that raised environmental issues. The responses describe the disposition of significant environmental issues raised by the comments and make changes and additions to the Draft EIR in response to those comments. The comments, responses to comments, resulting changes to the Draft EIR and additional information are all included in a First Amendment to the Draft EIR, which was completed and made available to the public on May 24, 2012. The First Amendment, taken together with the Draft EIR, constitutes the Final EIR. The Final EIR was certified by the City of San Jose Planning Commission on June 6, 2012. The City of Milpitas challenged the EIR in Santa Clara County Superior Court, which upheld the EIR. The City of Milpitas appealed that decision. The Sixth District Court of Appeal upheld the lower court decision in November, 2015.

The City of San Jose LEA has provided a finding that the proposed revised SWFP is consistent with and supported by the cited environmental document.

Staff recommends that the Department, acting as a Responsible Agency under CEQA, utilize the Final Environmental Impact Report, as prepared by the Lead Agency in that there are no grounds under CEQA for the Department to prepare a subsequent or supplemental environmental document or assume the role of Lead Agency for its consideration of the proposed revised SWFP.

The administrative record for the decision to be made by the Department includes the administrative record before the LEA, the proposed revised SWFP and all of its components and supporting documentation, this staff report, the Final Environmental Impact Report adopted by the Lead Agency, and other documents and materials utilized by the Department in reaching its decision on concurrence in, or objection to, the proposed revised SWFP. The custodian of the Department's administrative record is Ryan Egli, Legal Office, Department of Resources Recycling and Recovery, P.O. Box 4025, Sacramento, CA 95812-4025.

Public Comments:

The project document availability, hearings, and associated meetings were noticed consistent with the SWFP requirements. The LEA held a public informational meeting on September 25, 2017, at 901 East Calaveras Blvd, in the City of Milpitas. Eight members of the public were in attendance. Below is a summary of two written comments submitted to the LEA from the public via email, as well as the LEA's response to the comments:

Concern #1: Uncovered compost-related operations

Conversion to Covered Aerated Static Piles (CASP) alone may not adequately abate odor since green waste grinding operation, stockpile and material transfers to/from compost piles remain uncovered despite being confirmed sources of odor (per BAAQMD's investigations). The proposed cover (wood chips) is not a permanent fixture

and may be damaged by wind erosion or improper maintenance. Palo Alto Public Works had openly published the following conclusion in its decision to end composting operation within its city boundary: *"While many technologies can control process odors, only a structure that covers the entire operation (like a building) can control odors that generate from moving the compost into the vessels or from process area to process area."*

Concern #2: Risk of increased odor nuisance during CASP transition

Based on Republic Services West Contra Costa Landfill's recent struggle with Covered Aerated Static Piles technology (including a cease-and-desist order from the LEA), I am concerned over any odor nuisance from unforeseen problems as the operator appears to still be learning and developing CASP BMPs. Additionally, the operator expects increased transfer of materials during the CASP transition. These transfers, if not properly managed, could increase odor nuisance.

Concern #3: Permit enforcement

While public nuisance condition has always been a condition in the compost permit, LEA has not demonstrated to the public that it is committed to enforce this condition. From 2014 to 2017, LEA has only issued 1 violation (9/15/2015) to Newby Island Compost operation despite BAAQMD's recurring statements that the compost operation is a dominant odor source and continue to forward confirmed compost complaints to LEA. There is no transparency in the process for the public to track LEA's responses to these confirmed compost complaints.

Summary of LEA's response to written comments.

The LEA responded to the comments by stating that through the issuance of the existing Compostable Material Handling Facility Permit, the operations at Newby Island Compost Facility were an acceptable land use that did not inflict a nuisance on the community when properly regulated. The LEA also stated that upon conducting their independent investigation on odor complaints received, they did not issue any violations because they found the facility to be in compliance with State Minimum Standards. The LEA informed the commenters that the new CASP technology would drastically improve any odor emissions at the facility and would continue to hold the facility to the same standards in an effort to protect public health and the environment.

Department staff provided an opportunity for public comment during the CalRecycle Monthly Public Meeting on and December 19, 2017. No comments were received.